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Assn., 112 Ia. 41, 83 N. W. 800; *Sharpless v. Grand Lodge*, 135 Minn. 35, 159 N. W. 1086. Cf. *Cleaver v. Mutual Life Ass'n*, [1892] 1 Q. B. D. 147. And a similar result has been reached in two cases involving ordinary life policies. *Equitable Life Assurance Society v. Weightman*, 61 Okla. 106, 160 Pac. 629; *Robinson v. Metropolitan Life Insurance Co.*, 69 Pa. Super. Ct. 274. This seems the more desirable result. The public policy against allowing the beneficiary to take has reference only to his taking beneficially. If he is allowed to take in constructive trust for the persons who would have taken had he predeceased the insured, justice can easily be achieved. See Roscoe Pound, "The Progress of the Law — Equity," 33 HARV. L. REV. 420, 421. See also 30 HARV. L. REV. 622. This is in accord with the better view as applied in cases where a devisee murders his testator, or an heir his ancestor. See AMES, LECTURES ON LEGAL HISTORY, 310. Cf. *Ellerson v. Westcott*, 148 N. Y. 149, 42 N. E. 540. In the principal case, if the murderer had predeceased his wife she would have taken under the policy. Accordingly, he should take in constructive trust for her next of kin.

INTERNATIONAL LAW — TREATIES — EFFECT OF WAR UPON PRE-EXISTING TREATIES. — The plaintiff was an Austrian subject resident in the United States. Just after the declaration of war by the United States against Austria, the plaintiff's father died intestate seized in fee simple of real estate in New York. The Convention of 1848 between Austria and the United States gave reciprocal rights of inheritance to the subjects of each in the lands of the other (9 STAT. AT L. 944). In a suit for partition against the other heirs, the plaintiff's capacity to acquire title by descent depended upon the continuance in force of this treaty provision. Held, that the plaintiff had the capacity. *Techt v. Hughes*, 229 N. Y. 222, 128 N. E. 185.

For a discussion of the principles involved in this case see NOTES, page 776, *supra*.

NEGLIGENCE — DUTY OF CARE — RESPECTIVE DUTIES OF CARRIER AND CONDUCTOR TO PASSENGER. — Action was brought by a passenger against the carrier and conductor for damages for injuries alleged to have been sustained through the negligence of the defendants. The trial court instructed the jury that both defendants owed the passenger the "highest practical care." Held, that this was error as to the conductor. *May v. C. B. & Q. R. Co.*, 225 S. W. 660 (Mo.).

In defining the duty of care owed its passengers by a carrier, the courts generally have made the fundamental error of confusing the fixed standard of due care with the ever-varying *quantum* of diligence called for by the changing circumstances of particular situations. To this confusion we owe frequent charges requiring the carrier to exercise the highest degree of care or a very high degree of care. *Pittman v. Hines*, 221 S. W. 474 (Ark.); *Sheppard v. Brooklyn R. Co.*, 146 App. Div. 806, 131 N. Y. Supp. 507. See *Groshong v. United Rys. Co.*, 142 Mo. App. 718, 121 S. W. 1084. Many courts, while using these emphatic phrases, show by their accompanying language an adherence to the correct rule. *Austin v. St. L. R. Co.*, 149 Mo. App. 397, 130 S. W. 385; *St. L. R. Co. v. Woodall*, 159 S. W. 1012 (Tex. App.). Still other courts lay down the true doctrine in unambiguous terms. *Raymond v. Portland R. Co.*, 100 Me. 529, 62 Atl. 602. The principal case presents an unusual opportunity to apply the standard correctly. The circumstances being the same, due care required of the conductor the same amount of diligence that the carrier owed. The instruction should have been reversed as to both defendants with directions to require, as to both, due care in the circumstances.